

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHUKWUEMEKA O. EZIOLISA,

Defendant.

Case No.: 3:10CR039

PLEA AGREEMENT

This constitutes the plea agreement between the defendant, **CHUKWUEMEKA O. EZIOLISA** ("Defendant"), individually and through his attorney, Assistant Federal Public Defender F. Arthur Mullins, and the United States Attorney's Office for the Southern District of Ohio ("USAO"), through the undersigned Assistant United States Attorney(s), (collectively, "the parties"). The parties agree as follows:

PLEA

1. Defendant will plead guilty to both counts of the two-count Information in this case. Count 1 of the Information charges Armed Credit Union Robbery, in violation of 18 U.S.C. §§ 2113(a) and (d). Count 2 of the Information charges Use and Carrying (Namely, Use, Carrying and Brandishing) of a Firearm During and in Relation to a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii). Defendant is competent and understands the nature of each charge to which he is pleading guilty. Defendant is, in fact, guilty of the offenses charged in the Information (collectively, "Counts of Conviction"). The Statement of Facts, which is attached

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hereto as "Exhibit A" and incorporated herein by reference as though set forth in full, is true and correct and provides a factual basis for Defendant's guilty pleas as required by Rule 11(b)(3) of the Federal Rules of Criminal Procedure, but does not include all of the facts involved in the offenses to which Defendant is pleading guilty.

STATUTORY PENALTIES AND SENTENCING

2. Defendant understands that the statutory minimum and maximum penalties for each violation of:

- 18 U.S.C. §§ 2113(a) and (d) (Count 1) are: at least 1 day up to 25 years imprisonment; up to 5 years of supervised release; and up to a \$250,000 fine.
- 18 U.S.C. § 924(c)(1)(A)(ii) (Count 2) are: at least 7 years up to a lifetime of imprisonment, which term of imprisonment must be served consecutively to any other term of imprisonment imposed on Defendant; up to 5 years of supervised release; and up to a \$250,000 fine.

Defendant further understands that the total minimum and maximum penalties for all Counts of Conviction are: at least 7 years and 1 day, up to a lifetime of imprisonment; up to 5 years of supervised release; and up to a \$500,000 fine. Defendant further understands that the Court has an obligation to impose a special assessment of \$100 for each count of conviction and has the authority to order restitution.

3. An offense listed in 18 U.S.C. § 3663A(c)(1) gave rise to this plea agreement.

Defendant understands that pursuant to 18 U.S.C. § 3663A, the Court must order Defendant to make restitution to all victims of his offenses, unless it finds from facts on the record that one or

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both of the circumstances described in 18 U.S.C. § 3663A(c)(3)(A)-(B) applies. Neither circumstance applies in this case.

4. Defendant understands that supervised release is a period of time following imprisonment during which Defendant will be subject to various restrictions and requirements, and that if Defendant violates one or more of the conditions of any supervised release imposed, he may be returned to prison for all or part of the term of supervised release.

5. There is no agreement as to what Defendant's sentence in this case will be. Defendant understands that the Court will determine Defendant's sentence, and that in determining a sentence, the Court has the obligation to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a). The parties stipulate pursuant to U.S.S.G. § 1B1.2(c) that in addition to the Counts of Conviction, Defendant committed the following offenses, as more fully described in the attached Statement of Facts:

- (A) Assault by Use of Dangerous Weapon in Attempting to Commit Credit Union Robbery, in violation of 18 U.S.C. §§ 2113(a) and (d), on or about December 4, 2009;
- (B) Use and Carrying (Namely, Use, Carrying and Brandishing) a Firearm During and in Relation to a Crime of Violence, Namely, Assault by Use of Dangerous Weapon in Attempting to Commit Credit Union Robbery in violation of 18 U.S.C. §§ 2113(a) and (d), all in violation of 18 U.S.C. § 924(c)(1)(A)(ii), on or about December 4, 2009;
- (C) Interference with Commerce by Threats or Violence, in violation of 18

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U.S.C. § 1951, on or about December 5, 2009;

- (D) Use and Carrying (Namely, Use, Carrying and Brandishing) a Firearm During and in Relation to a Crime of Violence, Namely, Interference with Commerce by Threats or Violence in violation of 18 U.S.C. § 1951, all in violation of 18 U.S.C. § 924(c)(1)(A)(ii), on or about December 5, 2009.

The parties reserve the right to offer evidence and argument regarding the Sentencing Guidelines (including but not limited to base offense levels, specific offense characteristics, adjustments and departures) and the other sentencing factors set forth in 18 U.S.C. § 3553(a).

6. Defendant understands that the U.S. Probation Office ("USPO") will conduct a pre-sentence investigation and will provide a non-binding recommendation to the Court as to the applicable Sentencing Guidelines range and ultimate sentence. Any recommendations or arguments of the parties, as well as any recommendations, projections or estimates Defendant has received or will receive from his counsel, the USAO, or others, as to the Sentencing Guidelines or ultimate sentence, are non-binding. Defendant understands that the Sentencing Guidelines are advisory, and the Court must impose a sentence of at least the mandatory minimum statutory penalties and may impose a sentence up to the maximum statutory penalties.

WAIVER OF TRIAL AND GRAND JURY RIGHTS:

ACKNOWLEDGMENT OF RIGHT TO COUNSEL

7. Defendant understands that he has the following rights:

- to plead not guilty, or having already so pleaded, to persist in that plea;
- to a jury trial;
- at trial, to confront and cross-examine adverse witnesses, to be protected

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from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

Defendant further understands that if the Court accepts his guilty pleas pursuant to this plea agreement, there will be no trial and he waives these trial rights.

8. Defendant further understands that he has the right to be charged by way of an Indictment returned by a grand jury. Defendant waives this right and agrees to be charged in this case by way of an Information.

9. Defendant further understands that he has the right to be represented by counsel—and if necessary have the court appoint counsel—at every stage of these proceedings.

DEFENDANT'S ADDITIONAL OBLIGATIONS

10. Defendant will pay the \$200 in total mandatory special assessments at or before the time of sentencing.

11. Defendant is not a prevailing party as these terms are used in the Hyde Amendment (set forth as a statutory note under 18 U.S.C. § 3006A). Defendant waives filing any suit or asserting any claim against the United States, including its agents and employees, arising out of or otherwise relating to this case, under this or any other provision.

12. Defendant will make full restitution to all victims of his offenses and will not to seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

13. Defendant will not withdraw or seek to withdraw any of his guilty pleas or otherwise seek to have any of them set aside. If Defendant does not plead guilty pursuant to this plea agreement, if he withdraws or seeks to withdraw any of his guilty pleas or otherwise seeks to

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have any of them set aside, or if any of his guilty pleas are withdrawn or set aside for any other reason, then (i) Defendant waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, and U.S.S.G. § 1B1.8(a); (ii) this plea agreement, evidence of the guilty pleas, as well as any statements made by Defendant in the course of plea discussions, in any proceeding under Rule 11 of the Federal Rules of Criminal Procedure, or to any law enforcement authorities, will be admissible against Defendant without limitation in any civil or criminal proceeding; (iii) Defendant waives all defenses based on the statute of limitations and the Speedy Trial Act as to any charges that are not time-barred as of the date Defendant signs this plea agreement.

14. Defendant (i) will cooperate truthfully and completely with the Court, the USPO, and the United States Pretrial Services Office, (ii) will appear as ordered for all court appearances and otherwise comply with the Court's instructions, orders and judgment in this case, and (iii) will not commit any crime. Nothing in this plea agreement authorizes Defendant to commit any crime.

THE USAO'S OBLIGATIONS

15. If Defendant complies fully with all his obligations under this plea agreement, the USAO will:

(A) not file additional criminal charges against Defendant for the criminal violations described in the attached Statement of Facts, including the criminal violations identified in paragraph 5(A)-(D) of this plea agreement. Defendant understands that the Court may consider uncharged conduct in determining Defendant's sentence.

(B) provided that Defendant has demonstrated an acceptance of responsibility for

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his offenses up to and including the time of sentencing, (i) not oppose the granting of a two-level reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1, and (ii) not oppose and, if necessary, move for the granting of an additional one-level reduction if available under that section.

FORFEITURE

16. Any and all property, real or personal, which constitutes or is derived from proceeds traceable to the violation charged in Count 1 of the Information is subject to forfeiture and shall be forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461.

Any and all firearms and ammunition involved in any of the violations charged in the Information, including but not limited to a Bryco Jennings .380 caliber handgun, serial # 402155, are subject to forfeiture and shall be forfeited to the United States pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461. An Order of Forfeiture to the United States of these assets may be entered by the Court, and Defendant waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands that his sentence will include forfeiture of assets, and Defendant waives any failure by the Court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the time his guilty pleas are accepted. Defendant further waives all constitutional and statutory challenges in any manner (whether by direct appeal, habeas petition, or otherwise) to the forfeiture of the above assets on any grounds, including that the forfeiture constitutes an excessive fine or punishment. No forfeited assets may be used to satisfy any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon Defendant in

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addition to forfeiture.

LIMITED WAIVER OF APPEAL AND COLLATERAL ATTACK

17. Defendant waives the right to challenge his conviction and sentence, whether by direct appeal, habeas petition, or otherwise. This includes but is not limited to a waiver of the right under 18 U.S.C. § 3742 to appeal the sentence. Notwithstanding the foregoing, Defendant retains the right to appeal his sentence if the United States appeals the sentence, or if the Court:

- imposes a sentence above the statutory maximum;
- imposes a sentence above the applicable advisory Sentencing Guidelines range as determined by the Court;
- departs upward under the Sentencing Guidelines in offense level or criminal history category and imposes a sentence above the Sentencing Guidelines range that would have applied but for the upward departure, or
- determines a Sentencing Guidelines enhancement in the nature of a specific offense characteristic or upward adjustment applies, which was not agreed to by the parties and was objected to by Defendant, and imposes a sentence above the Sentencing Guidelines range that would have applied but for the enhancement.

NO OTHER AGREEMENTS

18. Except as set forth herein, there are no promises, understandings or agreements between the USAO and Defendant or Defendant's counsel. This plea agreement binds only the USAO and does not bind any other federal, state or local prosecuting authority.

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DEFENDANT'S ACKNOWLEDGMENT

19. By signing below, Defendant acknowledges that he is competent to enter into this plea agreement, that he has carefully read and fully understands this plea agreement, that he accepts this plea agreement knowingly and voluntarily and not as a result of any force, threats, or promises (other than the promises in this plea agreement), that he has conferred with his attorney regarding this plea agreement and the facts and circumstances of this case, including the applicable law and potential defenses, and that he is fully satisfied with the representation, advice, and other assistance of his attorney in this case.

CARTER M. STEWART
United States Attorney



VIPAL J. PATEL
ANDREW J. HUNT
Assistant United States Attorneys



CHUKWUEMEKE O. EZIOLISA
Defendant



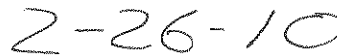
F. ARTHUR MULLINS
Assistant Federal Public Defender
Attorney for Defendant



Date



Date



Date




Exhibit A

STATEMENT OF FACTS FOR CHUKWUEMEKA O. EZIOLISA

Counts of Conviction

On or about December 19, 2009, the defendant, **CHUKWUEMEKA O. EZIOLISA**, wearing black clothing, black gloves, and a black ski-mask, entered the Abbey Credit Union, located at 800 Falls Church Drive, in Vandalia, Ohio, within the Southern District of Ohio. The defendant carried with him a firearm, namely, a silver Bryco Jennings .380 caliber handgun, serial # 402155. The defendant demanded money from the credit union's employees while pointing the handgun at them, and thereby stole approximately \$5,773 of the credit union's cash. At the time of the robbery, the Abbey Credit Union's accounts were insured by the National Credit Union Administration Board. At the time the firearm was recovered by law enforcement officers at the defendant's residence on December 29, 2009, it was loaded with live ammunition.

Stipulated Counts

On or about December 4, 2009, the defendant drove to a parking lot adjacent to the Day Met Credit Union, located at 4988 Wagner Ford Road, in Dayton, Ohio, within the Southern District of Ohio. He parked there until the credit union closed for the day. After closing, the manager of the credit union got in her car and drove to a restaurant on her way home. The defendant followed the manager from the credit union and parked next to her car at the restaurant. As the manager exited her car to go into the restaurant, the defendant told the manager to get in his car while pointing a firearm at her, intending for her to accompany him back to the credit union so that he could gain entry and rob it. He was unsuccessful, as the manager yelled and fled to a neighboring business establishment where she obtained help, at

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which point the defendant fled. At the time of the assault and attempted robbery, the Day Met Credit Union's accounts were insured by the National Credit Union Administration Board.

The next day, December 5, 2009, the defendant drove to Check Into Cash, a check cashing business engaged in interstate financial transactions and commerce, located at 6202 Brandt Pike, in Huber Heights, Ohio, within the Southern District of Ohio. The defendant entered Check Into Cash, and after pulling a black ski mask over his face, he demanded money from a Check Into Cash employee while pointing a firearm at her, and thereby stole approximately \$884 of Check Into Cash's cash.

AGREED AND ACCEPTED:

Emeka O. Ezolisa.
CHUKWUEMEKA O. EZIOLISA
Defendant

2-26-10
Date

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